

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**JUNE 12, 2001**

<b>IN RE:</b>	)	
	)	
<b>BELLSOUTH TELECOMMUNICATIONS, INC.</b>	)	<b>DOCKET NO.</b>
<b>TARIFF TO OFFER CONTRACT SERVICE</b>	)	<b>00-01137</b>
<b>ARRANGEMENT (FL00-4044-00)</b>	)	

---

**ORDER GRANTING APPROVAL OF BELLSOUTH  
CONTRACT SERVICE ARRANGEMENT (FL00-4044-00)**

---

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on January 23, 2001, on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. FL00-4044-00 ("CSA"). BellSouth filed Tariff No. 00-01137 on December 22, 2000, with a proposed effective date of January 23, 2001.

Based upon careful consideration of the tariff filing, the Authority makes the following findings and conclusions:

1. The purpose of this CSA is to provide a Volume and Term Discount to the customer identified in the filing. Through this arrangement, the customer agrees to meet an annual revenue commitment of 2.62 million dollars (\$2,620,000.00) in exchange for a nine percent (9%) discount.
2. The Executive Summary included with the CSA filing states that the term of the CSA is thirty-six (36) months. The CSA, however, does not include such a general statement.

Instead, the Main Agreement defines the term as follows: “The term of the Main Agreement commences on the Effective Date and ends on the date on which the term of the last Attachment hereto ends.”<sup>1</sup> Attachment 1, the only attachment included with the filing, provides: “The term of this Attachment may be extended for two additional one year periods upon the mutual agreement of the parties.”<sup>2</sup> Lastly, Exhibit 2 to Attachment 1 lists the term as three (3) years.<sup>3</sup>

Based on the language of the CSA, the Directors find that the term of the CSA is three (3) years with two (2) one (1) year optional renewals. Consistent with other decisions of this agency any optional renewal after the expiration of the three (3) year term is contingent upon approval by the Authority.

3. This CSA contains two termination provisions. The first relates to the termination of the underlying specific service and is linked to the tariff provision applicable to the underlying service. The second applies to the termination of the Volume and Term agreement. Because the first termination provision is contained in the underlying, previously approved tariff, it is only the second termination provision that is before the Authority in this docket.

4. In its December 22, 2000 cover letter included with the CSA filing, BellSouth agreed to notify the customer<sup>4</sup> that upon early termination of the CSA without cause, the lesser of

---

<sup>1</sup> BellSouth Business<sup>SM</sup> Master Services Agreement, sec. II (filed Dec. 22, 2000). The CSA is comprised of two documents; the Main Agreement and Attachment 1.

<sup>2</sup> *Id.* Attachment 1, Terms and Conditions for BellSouth Telecommunications, Inc. (“BST”) Regulated Services, para. 7P.

<sup>3</sup> *See id.* Exhibit 2 to Attachment 1, Terms and Conditions for BellSouth Telecommunications, Inc. (“BST”) Regulated Services, para. 1.

<sup>4</sup> BellSouth agreed during the October 24, 2000 Authority Conference that it would send the notice to the customer upon approval of the CSA by the Authority. *See* Transcript of Proceedings, Oct. 24, 2000, p. 15 (Authority Conference).

the following termination liability charges would apply to the termination of the Volume and Term agreement:

a. The amounts specified in the CSA the customer signed;<sup>5</sup>

b. The total of the repayment of discounts received during the previous twelve (12) months of service, the repayment of the prorated amount of any waived or discounted non-recurring charges, and the repayment of the prorated amount of any documented contract preparation, implementation and tracking, or similar charges; or

c. Six percent (6%) of the total CSA amount.

5. This CSA contains provisions for incentive awards and commitment shortfalls.

BellSouth provided an addendum executed by the customer clarifying the fact that the commitment shortfalls do not apply upon the customer's early termination of the CSA.

6. BellSouth provided an addendum executed by the customer stating that the customer was aware of competitive alternatives available to it in Tennessee and that the customer and BellSouth have agreed on the termination provisions and that the termination charges represent a reasonable estimate of BellSouth's damages in the event of termination.

7. BellSouth supplied cost data which indicates that the price of services offered under the CSA exceed their long-run incremental costs. Based on this information, BellSouth has complied with the statutory price floor established in Tenn. Code Ann. § 65-5-208(c).

---

<sup>5</sup> The termination provisions in the CSA require the customer provide written notice of termination sixty (60) days prior to the effective date of the termination and pay termination charges equal to "(a) Discounts received for the life of the Contract or for the previous 12 months, whichever is less, and (b) The prorated portion of the Contract Implementation and Tracking Costs . . . ." BellSouth Business<sup>SM</sup> Master Services Agreement, Attachment 1, section 7J (filed Dec. 22, 2000). During the Conference, BellSouth agreed that the notice discussed in the December 22, 2000 cover letter was not necessary in those instances where the termination liability limitation language appeared in the addendum to the CSA. See Transcript of Proceedings, Jan. 23, 2001, pp. 11-14 (Authority Conference). In this case, however, the notification is necessary because the limitation language in the proposed notice and the CSA or addendum thereto are not identical.

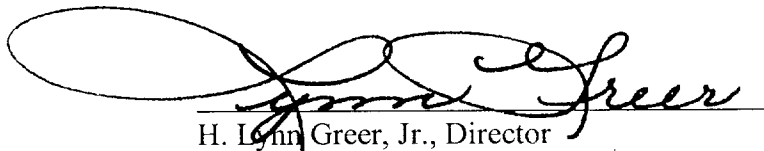
8. No parties sought to intervene in this docket.

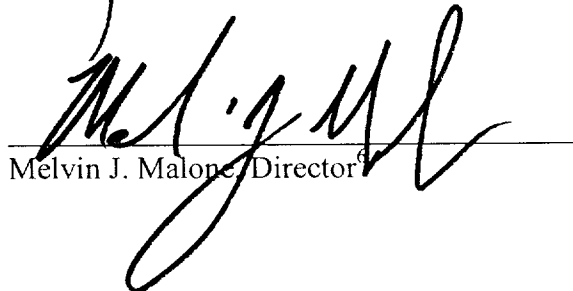
Based on the foregoing findings and conclusions, the Directors unanimously determined that the CSA in this docket should be granted.

**IT IS THEREFORE ORDERED THAT:**

BellSouth Telecommunications, Inc.'s Tariff No. 00-01137, which seeks approval of Contract Service Arrangement No. FL00-4044-00, is hereby granted.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director<sup>6</sup>

ATTEST:

  
K. David Waddell, Executive Secretary

<sup>6</sup> Director Malone has noted that, generally, the underlying tariff termination provisions with respect to the specific services that may be used to meet the volume and term requirements of a Volume and Term CSA contain buyout clauses, sometimes amounting to a ninety percent (90%) or one-hundred percent (100%) buyout. Notwithstanding Director Malone's approval of this Volume and Term CSA, he remains of the opinion that tariff termination provisions, however triggered, containing such buyouts are so potentially anticompetitive as to warrant modification by the agency on a going-forward basis.